

**PERMIT STREAMLINE/STANDARDIZATION WORK GROUP
MEETING MINUTES
January 22, 2004
OXBOW CENTER, ST. PAUL, VA**

ATTENDEES

Copies of the Sign in Sheets are attached

Les Vincent, DMLR – Les opened the permit streamline/standardization work group. Copies of the meeting agenda were passed around as well as sign in sheets.

Benny Wampler - Benny updated the group on issues before the Virginia General Assembly. Delegates Kilgore and Stump have a couple of bills in dealing with Big Sandy watershed, they are House Bill 496 and House Bill 535. The bills could give authority to localities to enforce any violation for any kind of stream degradation. Also a Senate Bill 543 introduced by Senator Hawkins, to establish a Secretary of Agriculture and Forestry and that would move DMME into that. The Agency has not taken a formal position on that, but Benny understands that the industry is having discussions with the Senator about leaving DMME in Commerce and Trade.

SMCRA Section 522E, Judge Robinson's ruling applying the lands unsuitable for mining protection to subsidence and underground mining that results in subsidence. A Federal Appeals Court overturned the ruling. The ruling would potentially prohibit longwall mining and other high extraction mining techniques that cause planned and controlled subsidence, his ruling held that you had to afford those protections on underground mining, you had to take the extent of the shadow area to houses, buildings and roads and all those things and apply it to underground mining, which would shut down a lot of underground mining. The plaintiffs have filed a petition for cert with the U. S. Supreme Court . The Interstate Mining Compact Commission had filed Amicus Brief at the circuit court of appeals level and now has filed an Amicus with the U. S. the Supreme Court opposing granting of cert.

The Abandoned Mine Land program is scheduled to end this coming September, so AML reauthorization is actively before Congress this session and we believe that they will take action. There is good chance that that legislation will be reauthorized. A couple of things are likely to drop out with the reauthorization. We have an indication that the AML Enhancement Rule is likely to be dropped and also any ability to reclaim Priority III environmental problem areas with AML funds. Congress is considering provisions providing money to fund the UMWA Combined Benefits Fund. The Fund has a \$200,000,000 shortfall, and Congress is likely to move \$200,000,000 out of the Rural Abandoned Mine Land program which is under the US Dept of Agriculture to bail out the Fund.

In the Ratliff case on Gas and Oil, Judge Williams ruled that if you have a right to remove the coal you don't necessarily have the right to remove the gas unless you have a deed that says you own the gas. Different sources believe that the Virginia Supreme

Court may go beyond Judge Williams ruling and say that the surface owner owns the void. That ruling is scheduled to be out the first week in March.

DMME has an ongoing program to digitize all underground mine mapping. DMME appreciates those that who have assisted us with finding maps and ask that if you know of anyone having maps that we may not have to please let us know where we can find those.

On January 21, 2004 the U. S. Supreme Court ruled that the EPA could override state officials and order anti pollution measures that may be more costly. This was as a five to four decision resulting from an Alaskan regulatory decision under the Clean Air Act.

There are a number of environmental appeals before the Supreme Court this spring that will need to be watched that may have a far-reaching affect on the mining industry.

DMME's monitoring of compliance records has identified a couple of issues where you are going to see us focusing on in the coming months. One is black water. Pond designs need to have backup provision in the event something goes wrong. It will cost industry to deal with this, but it will be a lot cheaper to deal with it now than if a black water event occurs. Three instances happened in Buchanan County recently and the Kentucky Water Division became involved and wrote violations in Virginia and called in the EPA U.S. Fish and Wildlife, and other agencies.

Blasting is the other issue, particularly in and around houses with being people directly affected. DMME is going to be looking at blasting areas on the permits close to housing to see if there are ways to minimize the disruption and to look for ways to improve our effectiveness in being able to assist operators in being good neighbors, realizing that we have a need to remove the coal at the same time.

Les Vincent gave copies of the combined Virginia's comments on EIS. In Virginia, DEQ is the lead agency on any environmental impact statement review, and they solicited comments from agencies throughout the state. Some of the comments were regarding things that were already being done. Some of the agencies were opposed allowing the fills in the streams. DMME had a meeting with DEQ in Richmond where the agencies came together and discussed the issues. DMME gave a presentation mining, and about remining in particular and the importance of reclaiming AML sites and improving water quality and a lot of the stream restoration work that's gone on down here. Agencies then went back and redrafted their comments, and sent to DEQ again. Some agencies didn't change their comments, others did, and they then compiled this final document, which was sent EPA. Comments were due 01-06-04. The state of Kentucky didn't get comments in by the 01-06-04 deadline. Kentucky recently got a new Cabinet Secretary after the new Governor took office. The new administration then eliminated the Dept of Labor and the Dept. of Surface Mine Reclamation and Enforcement and combined the two into a Dept. of Environmental Protection and Public Safety. Kentucky asked for and was given a two-week extension, which expired 1-21-04, and as of noon yesterday, Kentucky still didn't have their comments in. They hadn't decided on what position to take, and DMME is waiting to hear from them. The new cabinet Secretary is from EPA.

The Secretary is an attorney and very well versed in the Clean Water Act and taking a very active role in developing this and is listening to all of the parties, but they have not been able to come to a consensus on what position to take. The draft EIS had alternatives ranging from a no action alternative, keeping things where they are to the Fed's taking primary control over the mining. DMME recommended the EIS be stopped due to inadequacy of technical studies which didn't address all the issues, the studies were incomplete, not all the issues were studied and no studies were done in Virginia. The technical studies were short term, the researchers admitted they didn't have enough data to reach any conclusions and if it goes forward it is likely that ten to fifteen million more dollars will be spent with another two or three years of uncertainty. DMME's feels like enough changes have been made that could work with OSM and the Corp to do what's necessary to meet the requirements of the current regulations.

Greg Conrad with the Interstate Mining Compact Commission (IMCC) submitted comments regarding the draft programmatic environmental impact statement of mountaintop mining/valley fill in Appalachia. IMCC endorsed DMME's comments, and did not support moving forward with EIS.

NWP21- The ACOE are developing standard operating procedures on getting a Nationwide 21 Permit. A lawsuit filed in West VA last fall challenging the ability of the ACOE to issue NWP21's based upon procedural deficiencies the reauthorization of NWP21's.

The draft EIS has singled out selenium as a problem. In West VA the state has a more stringent Selenium standard than EPA and industry is pushing a rule change to get selenium standard in line with EPA's and the USFW is opposing that, they want it to be tested and effluent limits to be put on it.

Gerald Collins said that in meetings with DMME staff and outside clients, DMME continues to compile suggestions on ways to improve Electronic Permitting (EP) and other review issues. DMME is working on getting the new version of EP out in the first quarter. He said the Department is working with some document comparison software to incorporate into EP. The goal is to have something on the web that you can access and be able to have everything you need to do permits. At this time there are about one hundred people outside the agency using EP. When the new version does go out, Greg Baker and Tom Mackey will be involved in that process and they will be visiting our clients to put the software on their computers. DMLR would still like to receive suggestions concerning EP so changes to the program can be made to help those using EP.

DMLR received a letter from Dept of Historic Resources (DHR). DHR does receive a copy of our new permits or additional acreage permits, and there is a section in the permit to address any potential historic property or archeology property, etc. In this letter DHR wrote, "We ask that future projects requiring cultural resource survey utilize individuals meeting the Secretary of the Interior's professional qualification standards." A copy of these standards was distributed for review.

Permit review statistics were discussed. A significant improvement in turn around was noted.

Les discussed several options concerning electronic signatures and professional seals needed on certain documents

Les reviewed pending State regulation amendments such as the Pool Bond Amendment, which likely will be published next month. The Letters of Credit regulation amendment is being finalized and should be published in the near future.

Federal regulation proposed rules were discussed. These were Ownership and Control changes and the Stream Buffer Zone.

Les handed out and reviewed a list of Invasive/Alien Plant Species (§10.1-2608).

The meeting then opened the floor for discussion. Questions concerning map digitizing were discussed. Also discussed were consultants being asked to address problems in the permit that does not pertain to the application being reviewed. They want to know if that can be handled in an R.O.N. or a Midterm Review.

The need to put a permit into temporary cessation when underground mining ceases, but the site continues pumping and ventilation was discussed.

AMD bonding was discussed and the potential for OSM to require financial guarantees for longterm polluttional discharges.

After a discussion concerning the reinstatement of the Anniversary Maps, the group was in agreement that the maps should be reinstated.

Greg Baker reviewed the new bond forms with the group and ask them to let him know if they had any problems with them.